

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ariel Courage	Team: Squad #6	CCRB Case #: 201601077	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 01/30/2016 12:30 AM	Location of Incident: § 87(2)(b)	Precinct: 105	18 Mo. SOL 7/30/2017	EO SOL 7/30/2017	
Date/Time CV Reported Sat, 01/30/2016 10:35 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Mon, 02/08/2016 11:22 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Joseph Fernandez	24064	946982	105 PCT
2. POF Annmarie Haines	08133	930305	105 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Vick Ramjaiwan	18039	931002	105 PCT
2. POF Kelly Troiano	18244	918511	105 PCT
3. POM Jonathan Venetucci	10384	942663	105 PCT
4. POM Dennis Jackson	19726	958718	105 PCT
5. POM Pete Hamilton	28188	931716	105 PCT
6. POM Todd Ello	24281	950375	105 PCT
7. POM Michael Didyk	14957	956596	105 PCT
8. POF Jacqueline Adelson	19600	958215	105 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Joseph Fernandez	Force: Police Officer Joseph Fernandez used a taser against § 87(2)(b)	§ 87(2)(b)
B.POM Joseph Fernandez	Force: Police Officer Joseph Fernandez used physical force against § 87(2)(b)	§ 87(2)(b)
C.POM Joseph Fernandez	Force: Police Officer Joseph Fernandez used a taser in touch-stun mode against § 87(2)(b)	§ 87(2)(b)
§ 87(2)(g), § 87(4-b)	§ 87(2)(b)	§ 87(2)(b)

Case Summary

On January 30, 2016, Captain Marash Vucinaj of Patrol Borough Queens South called IAB to report this incident (BR 01). On February 8, 2016, it was spun off to the CCRB. IAB Group 54 conducted a simultaneous investigation which, as of the writing of this report, is still open.

On January 30, 2016, at 12:30 a.m., § 87(2)(b) called 911 to report that his friend and co-resident at § 87(2)(b), § 87(2)(b) was in the basement of that location banging on walls, violent, and needed to take his medication (BR 02). Multiple officers from the 105th Precinct responded to the scene in roughly the following order: Sectors E and F, identified by the investigation as PO Jonathan Venetucci and PO Dennis Jackson; Sectors A and B, identified by the investigation as PO Jacqueline Adelson and PO Joseph Fernandez; Sectors C and D, identified by the investigation as PO Todd Ello and PO Michael Didyk; and Sectors G and H, identified by the investigation as PO Vick Ramjaiwan and PO Pete Hamilton, and Sector I, identified by the investigation as PO Kelly Troiano and PO Annmarie Haines. Two FDNY EMTs, identified by the investigation as § 87(2)(b) and § 87(2)(b) also responded. § 87(2)(b) was forcibly removed to § 87(2)(b) for psychiatric evaluation, and an AIDED report was completed for him (BR 03 and BR 04).

The investigation was unable to establish contact with either § 87(2)(b) or § 87(2)(b).

IAB obtained video footage from § 87(2)(b) in Queens, which they in turn provided to the CCRB on March 16, 2016. There are two video files, both of which are black and white and both of which lack audio. One angle faces towards the rear of § 87(2)(b), and captures the northwest side of § 87(2)(b), including the entrance to the basement. The second faces southeast on § 87(2)(b) towards its intersection with § 87(2)(b), and depicts the front yard of the location.

The first video angle (BR 05) depicts § 87(2)(b) exit the basement of § 87(2)(b) and push an officer, identified by the investigation as PO Ramjaiwan. § 87(2)(b) then runs from the side of § 87(2)(b) towards its front yard, pursued first by PO Fernandez, then by PO Ramjaiwan, who is in turn followed by a number of other officers. Although this is not clearly discernible on the video footage, PO Fernandez discharged his taser at § 87(2)(b) (**Allegation A**). According to officers, the taser failed to shock § 87(2)(b) as the prongs did not penetrate his clothing.



201601077_20160405_1520_DM.mp4

The second video angle (BR 06) shows that § 87(2)(b) fled out of the front gate of § 87(2)(b) and then fell face-first onto the sidewalk. It is not clear from the video footage what caused him to fall. § 87(2)(b) then turned onto his back. § 87(2)(b) is eclipsed from the head down by the fence in front of § 87(2)(b). PO Fernandez reached § 87(2)(b) and positioned himself at § 87(2)(b)'s left side. PO Fernandez then appeared to strike § 87(2)(b) on an unknown part of his upper body approximately seven times in quick succession (**Allegation B**).



201601077_20160405_1516_DM.mp4

PO Fernandez stopped striking § 87(2)(b) as additional officers came to his assistance. It is unclear what occurred thereafter due to the number of officers surrounding § 87(2)(b). While this is not clearly depicted on the video footage, PO Fernandez said that he used his taser on § 87(2)(b) once more in touch stun mode to overcome his resistance (**Allegation C**). In the course of doing so, PO Fernandez accidentally stunned PO Ramjaiwan's right hand, causing a laceration to PO Ramjaiwan's index finger and numbness, for which PO Ramjaiwan later received medical treatment (BR 07).

§ 87(2)(g), § 87(4-b)

The incident resulted in no arrests or summonses.

Mediation, Civil and Criminal Histories

- Due to the ongoing IAB investigation, this case was ineligible for mediation.
- As of April 11, 2016, neither § 87(2)(b) nor § 87(2)(b) has filed a complaint with respect to this incident (BR 08).
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

Civilian and Officer CCRB Histories

- This is the first CCRB complaint involving § 87(2)(b) (BR 10).
- PO Fernandez has been a member of the service for 7 years. There is one prior allegation against him (physical force – pushed/shoved/threw), which was exonerated. § 87(2)(g)

Potential Issues

- The investigation was not able to establish contact with § 87(2)(b).
The referral from IAB (BR 01) included only § 87(2)(b)'s address, § 87(2)(b) in Queens. Sgt. Morano, the IAB investigator, had no additional contact information for § 87(2)(b). § 87(2)(b) was not involved in any prior CCRB complaints, and had no prior arrests that might contain contact information. A COLES search did not yield any additional contact information. On February 10, 2016, and February 16, 2016, two please-call letters were mailed to § 87(2)(b). On February 18, 2016, CLEAR and Lexis Nexis searches returned two possible phone numbers for § 87(2)(b). § 87(2)(b) one associated with § 87(2)(b) and another associated with § 87(2)(b). These searches also revealed a second potential address, § 87(2)(b) in Queens. No phone number was returned associated directly with § 87(2)(b) or with § 87(2)(b) in Queens.

On February 18, 2016, the undersigned attempted to contact the number for § 87(2)(b) which was found not to be in service. Between February 18, 2016, and March 7, 2016, the undersigned called the number for § 87(2)(b) four times. On March 7, 2016, § 87(2)(b) called the undersigned back and identified himself as § 87(2)(b)'s father. § 87(2)(b) said that § 87(2)(b) could not be reached through him, that he did not know of any phone number for § 87(2)(b) and that he thought § 87(2)(b) still lived at § 87(2)(b) in Queens.

On March 4, 2016, and March 9, 2016, two please-call letters addressed to § 87(2)(b) were mailed to § 87(2)(b) Avenue. Both of these letters were returned with a handwritten note stating, "Not at this address."

When this case was first received it was unclear if § 87(2)(b) was still a patient at § 87(2)(b). On February 22, 2016, the undersigned mailed a letter to § 87(2)(b) requesting that they inform as to whether or not § 87(2)(b) was a patient. On March 4, 2016, § 87(2)(b) contacted the undersigned and confirmed that § 87(2)(b) was no longer a patient. They said the last address they had on file for him was § 87(2)(b), and the only phone number listed for him was the same as § 87(2)(b)s.

§ 87(2)(g)

- The investigation was not able to establish contact with § 87(2)(b)

The IAB referral listed § 87(2)(b)s address but did not include a phone number. On February 16, 2016, Sgt. Morano provided a phone number for § 87(2)(b). This phone number was the same as that listed on the EVENT report (BR 02). No other contact information was found for § 87(2)(b) through searches of applicable databases, including COLES, Lexis Nexis, BADS, and a check of prior complaints in CTS.

Between February 16, 2016, and February 22, 2016, five calls were placed to § 87(2)(b). Each time, the undersigned left a voice message requesting a call back. On February 16, 2016, and February 22, 2016, two please-call letters were mailed to § 87(2)(b) neither of which has been returned as undeliverable.

Findings and Recommendations

Allegation A – Force: Police Officer Joseph Fernandez used a taser against § 87(2)(b)

As was discussed above, the investigation was unable to establish contact with § 87(2)(b) or § 87(2)(b). Based upon video footage, police documentation, EMT statements, and officer statements, the following facts were established:

According to the EVENT report (BR 02), § 87(2)(b) called 911 to report that § 87(2)(b) was in the basement of § 87(2)(b) in Queens, where he was banging on the walls and acting violent, and needed to take his medication. Two FDNY EMTs, identified by the investigation as EMT § 87(2)(b) and EMT § 87(2)(b) responded, as did the aforementioned police officers. When the officers arrived, § 87(2)(b) directed them to the side door of § 87(2)(b) leading to the basement, where officers encountered § 87(2)(b). § 87(2)(b) seemed agitated in that he paced around the basement, gesticulated with his hands as he spoke, and verbally refused to be brought to the hospital. § 87(2)(b) was not physically combative at this time, and eventually EMT § 87(2)(b), EMT § 87(2)(b) and officers, primarily PO Venetucci and PO Jackson, were able to convince him to walk outside to the ambulance of his own free will.

§ 87(2)(b) walked up the stairs out of the basement. PO Fernandez followed directly behind § 87(2)(b). PO Ramjaiwan was standing to the right of the basement door upon exiting, and then turned so that he was facing the front of the house. When § 87(2)(b) emerged from the basement, he pushed PO Ramjaiwan by placing both hands around his chest. PO Ramjaiwan stumbled back but did not fall. § 87(2)(b) then turned and began running towards the front of the house. PO Ramjaiwan and PO Fernandez together followed § 87(2)(b) to the front yard.

PO Fernandez (BR 11) said that as he was walking up the basement steps behind § 87(2)(b) he saw § 87(2)(b) begin to pick up his pace. PO Fernandez picked up his pace to match § 87(2)(b)s. When § 87(2)(b) reached the top of the basement steps, he turned and pushed an officer backwards. At the time of the incident PO Fernandez could not tell who was pushed as it was dark outside. § 87(2)(b) turned at the top of the steps and began running towards the front of the house.

PO Fernandez pursued § 87(2)(b) yelling, “Stop!” § 87(2)(b) did not stop. As he ran after § 87(2)(b) PO Fernandez drew his taser, aimed it at § 87(2)(b)s back, and discharged it. PO Fernandez did so because he needed to halt § 87(2)(b)s flight and because § 87(2)(b) had not been responsive to his verbal command. PO Fernandez also said that because § 87(2)(b) had pushed someone, PO Fernandez feared he might assault others, or might push anyone else he encountered in the front yard out of his way. PO Fernandez was so focused on pursuing § 87(2)(b) that he did not actually notice whether or not there was anyone in the front yard at the time he discharged the taser (The second video angle shows that two police officers, identified by the investigation as PO Kelly Troiano and PO Annmarie Haines, who had just arrived to the scene, were standing just at the front gate when § 87(2)(b) fled – see above-referenced video 201601077_20160405_1516_DM).

The taser prongs struck § 87(2)(b) in his back. PO Fernandez initially thought that § 87(2)(b) fell to the ground because he had been tasered, but he later realized that one of the prongs had not successfully penetrated the heavy sweatshirt § 87(2)(b) wore, and he therefore had not actually been shocked; PO Fernandez did not know what caused § 87(2)(b) to fall.

PO Ramjaiwan (BR 12 and 13) heard the sound of PO Fernandez discharging his taser but did not see it. PO Ramjaiwan believed that § 87(2)(b) was not successfully struck by the taser, as he continued running for a few seconds before he fell.

Video footage depicts PO Fernandez drawing his taser and activating it – discernible by its glowing light (see above-referenced video 201601077_20160405_1520) – as he pursues § 87(2)(b) around the side of the house, though it is not possible to identify the moment that he discharges it.

The non-lethal restraining device report (BR 14) prepared by Captain Vucinaj indicates that he found PO Fernandez’s first use of the taser to be within department guidelines. IAB Group 54 is concurrently investigating this matter. Because their investigation remains open, their case file could not be released (BR 15). The AIDED report that PO Fernandez completed for § 87(2)(b) notes that he suffered from bipolar disorder, and that the taser was deployed to prevent injury to MOS (BR 03 and 04). The UF-49 confirms that § 87(2)(b) told Captain Vucinaj that there were no signs, such as prongs or puncture wounds, to suggest that § 87(2)(b) had successfully been tasered.

EMT § 87(2)(b) (BR 16) and EMT § 87(2)(b) (BR 17) both denied seeing PO Fernandez use his taser against § 87(2)(b). EMT § 87(2)(b) said that § 87(2)(b) later told him that he had been tasered, but that he had not felt anything due to the thick jacket that he wore.

PO Troiano (BR 22) was arriving to the scene just as § 87(2)(b) began fleeing. PO Troiano heard but did not see PO Fernandez discharge the taser at § 87(2)(b) as § 87(2)(b) fled.

A conducted energy device can be an effective means of subduing suspects and emotionally disturbed persons in a safe manner. It is intended to augment and provide a greater margin of safety for officers who might otherwise be forced to physically subdue a dangerous subject. It is considered to be within the range of use of less lethal devices such as pepper spray or

a baton. It should only be used against persons who are actively physically resisting, exhibiting active physical aggression, or to prevent individuals from physically injuring themselves or other persons actually present. Patrol Guide 212-117 (BR 18)

§ 87(2)(g)

Allegation B – Force: Police Officer Joseph Fernandez used physical force against § 87(2)(b)

It is not disputed that PO Fernandez struck § 87(2)(b) approximately seven times around his upper body.

The second camera angle (see file 201601077_20160405_1516_DM) depicts PO Fernandez striking § 87(2)(b) while § 87(2)(b) is lying on his back on the sidewalk. § 87(2)(b)'s body is obscured both by PO Fernandez and the fence in front of § 87(2)(b). It is not possible to see what § 87(2)(b) is doing in the moments before he is struck. PO Fernandez stops striking § 87(2)(b) once other officers approach to assist.

PO Fernandez (BR 11) said that when he reached where § 87(2)(b) was lying on the ground, he placed his shin across his chest to prevent him from getting up. § 87(2)(b) brought both of his arms around from underneath PO Fernandez's shin and put both of his arms up, with his hands closed into fists, so that his hands were level with PO Fernandez's stomach. PO Fernandez, fearing that § 87(2)(b) was about to punch him, used the right edge of his right hand, not his knuckles, to strike at § 87(2)(b)'s arms. § 87(2)(b) moved his arms out of the way, at which time a few of PO Fernandez's blows may have made contact with § 87(2)(b)'s shoulder and face. PO Fernandez struck § 87(2)(b) both to defend himself and because he had limited means of otherwise restraining him, as he had only one hand free – in his other hand he still held the taser – and there were, at that particular time, no other officers assisting him.

PO Ramjaiwan (BR 12 and 13) denied seeing PO Fernandez punch § 87(2)(b). PO Ramjaiwan could not describe the struggle between PO Fernandez and § 87(2)(b) before he approached, stating that all he could see was that they were fighting, though he could not tell more specifically how. Reviewing the video footage did not refresh his recollection. PO Ramjaiwan said that by the time he approached § 87(2)(b), § 87(2)(b) was flailing his arms about, though PO Ramjaiwan did not remember if his hands were closed into fists, and PO Ramjaiwan did not see § 87(2)(b) try to punch PO Fernandez. § 87(2)(g)

§ 87(2)(g)

EMT § 87(2)(b) (BR 16) and EMT § 87(2)(b) (BR 17) denied witnessing this portion of the incident, stating that by the time they emerged from the basement § 87(2)(b) had already been apprehended. § 87(2)(g). Both said that § 87(2)(b) did not complain of being injured, and did not have any physical injuries. The investigation is unable to confirm this as it was not able to access § 87(2)(b)'s Ambulance Call Report without § 87(2)(b)'s signing a HIPAA form, and the AIDED report completed by PO Fernandez did not note whether or not § 87(2)(b) was injured (BR 03 and 04).

PO Haines (BR 22) and her partner, PO Troiano, were standing just at the front gate of § 87(2)(b) in Queens as § 87(2)(b) fled. When § 87(2)(b) fell, PO Haines was standing less than a foot away from him. PO Haines saw PO Fernandez approach, position himself on top of § 87(2)(b) and punch him. PO Haines could not tell how many times PO Fernandez punched § 87(2)(b) or where on § 87(2)(b)'s body the punches made contact. Before PO Fernandez punched § 87(2)(b), § 87(2)(b) was resisting by swaying his torso side to side and holding his arms clenched in front of his body, specifically with his elbows bent so that his hands, which were closed into fists, were against his chest. PO Haines did not observe § 87(2)(b) ever bring his arms up closer to PO Fernandez, or attempt to strike PO Fernandez.

According to the 105th Precinct Roll Call, PO Troiano is on terminal leave and therefore could not be interviewed. On April 19, 2016, a request was sent to confirm her status, which will be added to the case file upon receipt.

The UF-49 (BR 20) prepared by Captain Vucinaj notes that he went to § 87(2)(b), where he was not able to interview § 87(2)(b) due to his mental state, but he did observe § 87(2)(b) and noted a contusion, swelling, and redness to his right eye.

As was discussed above, the investigation was not able to contact § 87(2)(b) or § 87(2)(b).

Officers must use the minimum level of physical force necessary to overcome resistance will be used to effect an arrest or take an emotionally disturbed person into custody. Patrol Guide Section 203-11 (BR 19) A police officer is permitted to use reasonable force to defend himself from the “imminent use of physical force” by another. PD v. Potter, OATH Index No. 1918/99 (1999) (BR 21)

§ 87(2)(g)

§ 87(2)(g)

Allegation C – Force: Police Officer Joseph Fernandez used a taser in touch stun mode against § 87(2)(b)

It is not disputed that PO Fernandez used his taser in touch stun mode against § 87(2)(b) § 87(2)(b).

It is not possible to discern the exact moment the taser is used in touch stun mode against § 87(2)(b) though between 12:37:47 a.m. and 12:37:50 a.m. a glowing object, possibly the taser, is visible positioned above § 87(2)(b)'s midsection in between officers' legs, and it is again visible at 12:37:57 a.m. (see file 201601077_20160405_1516_DM). Because § 87(2)(b) is surrounded by police officers, he is not visible to the camera, and because the investigation could not contact § 87(2)(b) the investigation therefore has no means of determining how § 87(2)(b) was behaving during this time except the accounts of police officers.

PO Fernandez (BR 11) said that after additional officers approached, he and the fellow officers were able to rotate § 87(2)(b) onto his stomach. Once on his stomach, § 87(2)(b) continued to resist by kicking his legs and trying to push himself up with his hands underneath his torso. Because the officers had still not been able to place § 87(2)(b)'s hands behind his back, PO Fernandez decided to again use his taser against § 87(2)(b). Because the prongs had already been discharged, PO Fernandez could not use the taser again except in touch stun mode. PO Fernandez held it to § 87(2)(b)'s lower back and discharged it. PO Fernandez gave no warning prior to using his taser, so that officers were still in close proximity when he used it; PO Fernandez consequently shocked PO Ramjaiwan on his finger with the taser. Once PO Fernandez used the taser a second time, § 87(2)(b)'s arms came out from underneath his body. PO Fernandez and the other officers were able to place his arms behind his back.

PO Ramjaiwan (BR 12 and 13) said that when he approached, § 87(2)(b) was lying on his back and was actively resisting by moving his arms back and forth at his sides. He continued to do this as PO Ramjaiwan and PO Fernandez each tried to grip his arms to pull them behind his back. PO Ramjaiwan believed that § 87(2)(b) was still lying on his back when PO Fernandez touch stunned § 87(2)(b) with the taser, inadvertently striking § 87(2)(b). PO Ramjaiwan did not remember where around § 87(2)(b)'s body his hand was at the time he felt the shock from the taser. PO Ramjaiwan then backed away to attend to his injured hand. PO Ramjaiwan did not know what happened to § 87(2)(b) thereafter.

PO Haines (BR 22) said that after § 87(2)(b) was punched, and after additional officers came to PO Fernandez's assistance, she stepped back from the struggle and did not see further how § 87(2)(b) behaved or how officers handcuffed him. PO Troiano was not aware of PO Fernandez using the taser a second time.

The non-lethal restraining device report (BR 14) and UF-49 (BR 20) note that Captain Vucinaj found PO Fernandez improperly used his taser a second time for the following reasons: PO Fernandez issued no warning to § 87(2)(b) or to his fellow officers prior to discharging the taser, resulting in the injury to PO Ramjaiwan; there were, by this point, numerous other officers surrounding § 87(2)(b) who could have safely subdued him by other means; and § 87(2)(b) was actively resisting but was not physically assaulting the officers attempting to handcuff him. Captain Vucinaj recommended that PO Fernandez be retrained on the use of a taser, and that he be prohibited from carrying one until his retraining was complete.

A conducted energy device, or taser, can be an effective means of subduing suspects and emotionally disturbed persons in a safe manner. It should only be used against persons who are actively physically resisting, exhibiting active physical aggression, or to prevent individuals from physically injuring themselves or other persons actually present. The use of a taser is within the range of use of less-lethal devices, such as pepper spray or a baton, on the force continuum, due to its effectiveness at a distance and at close range. Officers should issue an appropriate warning, consistent with personal safety, to the intended subject and other members of the service present prior to discharging the taser. Touch-stun mode is when the officer discharges the taser in such a manner that the unit makes direct contact with a subject's body. This should be used only in exceptional circumstances and not as a primary method of use. Patrol Guide Section 212-117 (BR 18)

§ 87(2)(g)

[REDACTED]

§ 87(2)(g), § 87(4-b)

[REDACTED]

Squad:

Investigator:	_____	_____	_____
	Signature	Print	Date
Squad Leader:	_____	_____	_____
	Title/Signature	Print	Date
Reviewer:	_____	_____	_____
	Title/Signature	Print	Date